

# CITY OF GEARHART

## Staff Report

For City Council Meeting - 12/4/2024

### ***Subject - Ordinances/Resolutions - Ordinance #945 An Ordinance Implementing Cost Recovery Services in the City of Gearhart***

**Synopsis:** City Attorney Peter Watts has provided the attached draft Ordinance #945 and the following summary on what it is, and how it came about. Division Chief Park also collaborated with Peter on the draft.

*Over the last four years the number of calls that the Gearhart firefighters respond to has nearly doubled. Recognizing the burdens faced by first responders, the Oregon legislature has enacted ORS Chapter 476 to allow cost recovery. This will allow the City to recover costs associated with services, particularly when responding outside of the District.*

*These fees will help offset the significant costs incurred during these operations. By implementing a cost recovery ordinance, the city can help insure that District ratepayers are not subsidizing non-District calls, and assure that insurance carriers are reimbursing the District for services. This ordinance is structured to ensure transparency, fairness, and accountability in the fee-setting process, providing a sustainable funding model for the District's ongoing needs. There is also sufficient flexibility in the fee schedule to ensure that the fees are fairly imposed.*

#### **Council Options:**

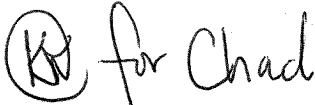
- 1) Motion to approve Ordinance #945 reading once by title only;
- 2) Make changes and motion to approve as amended;
- 3) Take other action desired by the Council.

**Recommended Motion:** City staff recommends Council motion to approve Ordinance #945 reading once by title only. Division Chief Park worked with Peter on this ordinance and is also in attendance to provide insight and answer questions.

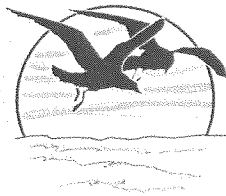
**Legal Analysis:** If approved, there will be a second reading in January with the ordinance taking effect 30 days later. Once in effect, a Resolution establishing fees will be brought to Council for immediate implementation.

**Financial Analysis:** Attorney Peter Watts is in attendance to elaborate.

Respectfully Submitted,

 for Chad

Chad



CITY OF  
GEARHART

**ORDINANCE NO. 945**

**AN ORDINANCE IMPLEMENTING COST RECOVERY SERVICES IN THE CITY OF GEARHART**

**WHEREAS**, Gearhart Rural Fire Protection District (the District) Board of Directors ("the Board of Directors") and the Gearhart City Council ("Council") desires to adopt an ordinance to enable the District to recover its actual costs for non-emergency response services provided by District personnel; and

**WHEREAS**, Oregon law allows and the Board of Directors and Council now wishes to adopt new fees, and clarify the process for future amendment of such fees; and

**WHEREAS**, ORS 478.410(4) authorizes a District to create fees for any services provided by the District through the adoption of an ordinance; and ORS 478.310 authorizes the District to recover its reasonable actual expenses for responses in unprotected areas outside of the Fire District, including the contract or reasonable value of use, including repairs and depreciation of equipment and other expenses reasonably incurred in furnishing the firefighting or public safety service; and

**WHEREAS**, the District Board of Directors and Council have examined the current Oregon State Fire Marshal's Standardized Cost Schedule from the Oregon Fire Service Mobilization Plan and determined that such costs are reasonable and would satisfactorily reimburse the District for costs incurred in responding in unprotected or inadequately protected areas outside of the District; and

**WHEREAS**, the fees established by this Ordinance have been evaluated by the Board of Directors and Council and the Directors and Council have reviewed and approved the actual costs of providing such services, responses, or permits; and

**WHEREAS**, the Board of Directors and Council have determined that the fees do not exceed the actual cost of providing such services, responses, or permits; and

**WHEREAS**, the Board of Directors and Council have determined that it is fair, reasonable, and appropriate to adopt a cost recovery mechanism to collect the costs of providing such services or responses, and the Board of Directors and Council have determined that such fees will be limited to cost recovery only and will not be used to generate revenue for the District; and

**WHEREAS**, the Board of Directors and Council wishes to equitably distribute District resources among all District citizens and has further determined that District responses to calls outside of the District are a drain on District resources and may impede legitimate in-District emergency responses; and

**WHEREAS**, the District desires to establish a published system of regulations, including fees and charges, to recover the District's reasonable estimate of the actual cost, including labor and material, repairs and depreciation of capital assets, and other overhead; and

**WHEREAS**, the fees and charges imposed by this Ordinance are not taxes subject to property tax limitations of Article XI, Section 11(b) of the Oregon Constitution;

**NOW, THEREFORE BE IT ORDAINED AS FOLLOWS:**

1. **FEE SCHEDULE ADOPTION.** The Board of Directors and City Council governing the Gearhart Rural Fire Protection District hereby adopt the rates set forth in the Rate and Fee Schedule attached hereto and by this reference incorporated within this Ordinance as Appendix A. The Board and Council further directs that such rates and fees, other than penalties for late payments, shall not be imposed as a penalty, but shall be calculated to recover the reasonable estimate of the actual cost to the District. The Board of Directors and Council may, from time to time, amend the Rate and Fee Schedule by resolution as provided in Section 4 herein.
2. **FEES ESTABLISHED.** The Board of Directors and Council hereby establishes and adopts the following cost-based fees, which shall be imposed subject to the Fire Chief or his or her designee's sole discretion in compliance with this Ordinance and any applicable administrative rules or procedures.
  - a. **False Fire and Medical Alarm Fee** A cost-based fee may be imposed for responses to repetitive false (nuisance) responses to fire and medical alarms as provided in this section. However, no cost recovery fee shall be imposed for the first false fire alarm or medical response to any residential or commercial occupancy during a calendar year. No cost recovery fee shall be charged if the fire alarm is a result of a fire or results in medical treatment being provided by EMS personnel. Canceled enroute false alarms are billable events subject to this fee. Fees under this section will be based upon the rates in Appendix A, as well as a reasonable estimate of the actual cost of similar fire or medical alarm responses.
  - b. **Open Burning Violation Fee** A cost-based fee may be imposed for open burning violation responses as provided in this section. Open burning violations are defined as violations of any locally adopted fire code or violations of any applicable Oregon Revised Statute or DEQ regulation. Such fees may be imposed for repeated violations, egregious or purposeful violations, or for any open burning violation during high and extreme fire danger. Fees will be based upon the rates in Appendix A, as well as other documented actual costs of responding to the violation.
  - c. **Transportation Route Response Fee** A cost-based fee may be imposed for responses on certain transportation routes, as further provided in this section. "Transportation route" means any roadway, railway right-of-way, or waterway, against which no taxes or assessments for fire protection are levied by the District. Such cost-based fees may be imposed for responses to incidents, responses, or occurrences on such Transportation Routes, including aircraft crashes. Transportation Route response invoices will use dispatch time records to determine the commitment of apparatus and personnel and will

use the rates as listed in Appendix A. Miscellaneous supplies and services may also be invoiced and will be based upon scene documentation of the officer in charge.

- d. **Unprotected or Inadequately Protected Area Response Fee** A cost-based fee may be imposed for responses to incidents in unprotected or inadequately protected areas outside of District boundaries as provided in this section. These responses will be billed on a “per hour” basis using dispatch time records to determine the commitment of apparatus and personnel, as well as rates in Appendix A. Miscellaneous supplies and services may also be invoiced and will be based upon the rates provided in Appendix A as well as scene documentation of the officer in charge.
- e. **Ambulance Transport Fee and Fire Personnel Fee** A cost-based fee may be imposed for certain ambulance transports as provided in this section. If the District transports a patient to an emergency room or to a helicopter landing zone using a District ambulance, it may invoice the patient and/or the patient’s insurance using the contracted ambulance transportation billing agent. Fees for such ambulance transport will be based on the established Clatsop County Ambulance Service Area Agreement. If District personnel are legally required to remain with a patient during a 3rd Party ambulance provider transport, the District may recover those costs.
- f. **Non-Emergency Facility Response Fee** A cost-based fee may be imposed for certain non-emergency requests for assistance from assisted living, residential care, or nursing facilities as provided in this section. If District staff or resources are requested by a commercial assisted living, residential care, or nursing facility to provide assistance to the facility’s staff for non-emergent situations (such as physically moving a non-injured resident), the District may impose the fees provided in this Section. In determining whether to impose such fees the Fire Chief shall, in his or her sole discretion, consider whether the response was:
  - 1) a result of a non-emergency situation;
  - 2) caused by or related to a lack of adequate staffing or lack of adequate facility resources necessary to meet the residents’ non-emergent needs, or
  - 3) requested by a facility who has repeatedly requested non-emergency assistance. Such fees will be based on the rates and fee schedule in Appendix A, as well as other documented actual costs of such response. Canceled enroute requests are considered billable events.
- g. **Fire Code Inspection and Enforcement Fees** A cost-based fee for fire code inspections and code enforcement may be imposed for any fire and life safety occupancy inspections; for re-inspections for previously identified fire code violations; or for the documented actual costs of enforcing the fire code to correct previously identified violations as provided in this section. Fees assessed may include any District-incurred costs to obtain necessary inspection warrants, including attorney costs. Such fees will be based upon the actual cost of conducting such inspections, enforcing the code, or performing any related

work and shall be calculated, if applicable, using the rates provided in Appendix A. Requests from contractors or business owners for new construction or maintenance inspections outside normal working hours may result in higher cost recovery fees due to the District's increased personnel costs for such requests.

- h. **Public Records Request Fee** A cost-based fee may be imposed for public records requests as provided for in this section. Requests for disclosure of public documents shall be in writing and on a District form and shall state the name and mailing address of the requestor. The Fire Chief or designee shall be responsible for reviewing requested materials prior to disclosure and will determine if the records are statutorily exempt from disclosure. Public records requests received from an opposing party or its legal counsel during pending litigation will be referred to District legal counsel. The District will not impose a fee for public records requests for incident reports from District residents or patients if the work entails less than one-quarter hour of staff time and the documents pertain to or involve the requestor. All requests require confirmation of requestor's identification and must comply with the Federal and Oregon HIPAA laws. If locating a document will require more than one-quarter hour to complete, or will require extensive research or labor, the District will provide to the requestor an estimate of when the materials will be available and the costs associated with the request. The District will require a deposit equal to the total amount of the fee if the costs of producing the documents will exceed one-quarter hour of staff time. If the actual costs exceed the estimated costs, the District may invoice the requestor for the balance of the costs. All fees are due prior to public record request documents being released.
- i. **Facility Rental and Training Classes** A cost-based fee may be imposed for District training facility rentals or training classes. Such fee will be imposed at the discretion of the Fire Chief or his or her designee. Profits realized through outside class participants or acquired structure live fire events will be deposited into the District's Equipment Fund and be utilized to replace, repair, or enhance the District's capital assets involved in providing these training opportunities.
- j. **Hazardous Materials Response Fees** Cost-based fees may be imposed for responses involving hazardous materials remediation and for hazardous materials-related incidents. Fees may be imposed regardless of a State Hazardous Materials Team response and, if imposed will only be charged for the hazardous materials-related costs. Such fees will be based on the rates and fee schedule in Appendix A, as well as other documented actual costs of such response. In addition, administrative costs and miscellaneous supplies and services may be billed.
- k. **Utility Assistance Fees** Cost-based fees may be imposed for responses to requests from utilities for assistance. The District responds to service calls involving utilities such as electric or cable wires down, natural gas leaks, water main leaks, etc. Cost-based fees may be imposed for these responses. Such fees will be based on the rates and fee schedule in Appendix A, as well as other documented actual costs of such response. In

addition, administrative costs and miscellaneous supplies and services may be billed.

1. **Technical Rescue Fees** Cost-based fees may be imposed for responses requiring technical or specialty rescue equipment or training. The Fire Chief shall determine if such fees shall be charged, taking into consideration whether the incidents occurred due to a lack necessary resources or adequate safety preparations. If such fees are imposed, they will only be charged for the costs related to technical or specialty rescue response. Such fees will be based on the rates and fee schedule in Appendix A, as well as other documented actual costs of such response. In addition, administrative costs and miscellaneous supplies and services may be billed.
- m. **Non-Life, Health, Safety Fees** If District Personnel are called to provide services unrelated to Life, Health and Safety issues, such as tree removal, the District may recover the fees. Such fees will be based on the rates and fee schedule in Appendix A, as well as other documented actual costs of such response. In addition, administrative costs and miscellaneous supplies and services may be billed.
3. **INVOICES; WAIVER.** The District shall address the invoices for fees to the responsible party or agent, which may be: a registered property owner or agent; a service recipient or agent; an occupant, a driver or passenger or agent; a vehicle or plane owner or agent; an insurance company; or any person or entity requesting or receiving services.. The Fire Chief, or designee, shall be responsible for determining the responsible party and for reviewing all the cost recovery invoices. The Fire Chief may, at his or her discretion, waive or amend fees assessed in compliance with this Ordinance and any applicable administrative rules.
4. **REVIEW AND AMENDMENT.** The Fire Chief will present the fees or rates adopted under this Ordinance to the Board of Directors and Council for review and possible amendment at least once every two years, or sooner upon the Fire Chief's sole discretion. The fees and Appendix A, which are adopted and approved by the Board of Directors and Council in this Ordinance, may be amended from time to time by Board resolution and Council resolution at a duly noticed and public meeting. Prior to adoption of the resolution, the Board and Council shall hold an opportunity for the public to comment on the resolution.
5. **RULES.** The Board of Directors and Council hereby grants to the Fire Chief the discretion to interpret and apply this Ordinance and to develop administrative rules to apply this Ordinance equitably. Such administrative rules must be consistent with this Ordinance and with applicable Board policy.
6. **APPEALS.** To file an appeal of a fee assessed under this Ordinance, the appellant must provide a written statement to the Fire Chief within ten days of receipt of the fee invoice. The Appeal must set forth the basis of the appeal and explain why they believe the fee was improper or improperly calculated. The Fire Chief is required to render a decision within 10 days of the Appeal. The decision of the Fire Chief is unappealable.

7. COLLECTIONS PROCEDURES. Fees shall be billed within sixty (60) days of the services being rendered. The fees shall be due on receipt. Fees not paid within sixty (60) days after receipt shall be rendered delinquent and shall be turned over for Collections as the Chief deems appropriate. The costs of Collections including any fees, penalties and interest, shall be paid by the responsible person.

Passed by the City Council of Gearhart this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

Yeas: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

Abstain: \_\_\_\_\_

Approved and signed by the Mayor of Gearhart this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Mayor Kerry Smith

ATTEST:

\_\_\_\_\_  
City Administrator, Chad Sweet



## APPENDIX A

The District adopts all fee schedules and the standardized-costs schedules for transportation route response, unprotected area response, and apparatus cost that are contained in the State Fire Marshal's Oregon Fire Service Mobilization Plan pursuant to Oregon Administrative Rule ("OAR") 837-130-0020.

The District adopts the volunteer firefighter reimbursement rate that is contained in the State Fire Marshal's Oregon Fire Service Mobilization Plan pursuant to OAR 837-130-0020.

All responses billed under these rules are subject to a 30-minute minimum response charge.

The District adopts the definitions found in OAR 837-130-0010.